

Application No. 09/904,459
Amdt. dated July 9, 2003
Reply to Office Action of April 14, 2003
Docket No. 0508-1068

REMARKS/ARGUMENTS

Claims 1-9, 12-14, and 27-30 are pending in the present application. Claims 10 and 11 have been canceled.

In the outstanding Official Action, it is believed that claims 1-9, 12-14 and 27-30 were rejected for allegedly being drawn to an improper Markush group. This rejection is respectfully traversed.

Applicants believe that the outstanding Official Action fails to establish why the claims are not in condition for allowance. In imposing the rejection, the Official Action states, "Applicants did not point to a community of chemical or physical characteristics, which justify their inclusion in a common group, that such inclusion is not repugnant to principles of scientific classification". In doing so, Applicants believe that the Patent Office impermissibly places the burden on the Applicants.

As the Examiner is aware, it is improper for the Patent Office to refuse to examine that which Applicants regard as their invention, unless the subject matter in the claims lack unity of invention. *In re Harnish*, 631 F2d 716, 206 USPQ 300(CCPA 1980); and *Ex parte Hozumi*, 3 USPQ 2d 1059 (BPAI 1984). Applicants note that §803.02 of the MPEP broadly and clearly recites that unity of invention exists for compounds included within a Markush group

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that (1) share a common utility, and (2) share a substantial structural feature.

However, the Official Action fails to provide any evidence that the claims directed to the stable activated derivatives of carbamic acid lack unity of invention. Indeed, the Official Action does not show that the claims lack a common utility or do not share a substantial structural feature. Rather, the Official Action maintains the unsupported allegation that the claims lack unity of invention. As a result, Applicants believe that the Markush rejection is improper and must be withdrawn.

Indeed, if the Patent Office is able to present evidence at this stage of prosecution, Applicants believe that they would be entitled to another "non-final" Office Action in order to properly respond to any newly submitted evidence. However, as the Patent Office fails to provide any evidence in support of the improper Markush rejection, Applicants believe that the present application is in condition for allowance.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any

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overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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PD/bsg